

# **I-5 / Everett HOV Design-Build Project**

# **REQUEST FOR PROPOSALS**

## **Appendix Q1 Example Operation and Maintenance Agreement (BNSF/WSDOT)**

**Addendum #8:**

**March 15, 2005**

Example

OPERATIONS AND MAINTENANCE AGREEMENT  
SR 16 SECOND TACOMA NARROWS OVERHEAD HIGHWAY BRIDGE  
(RR MP 8.51)  
SR 16, MP 7.29  
TACOMA, WASHINGTON

RAILWAY Contract NO. \_\_\_\_\_  
File No \_\_\_\_\_

AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, hereinafter referred to as the "RAILWAY", and the STATE OF WASHINGTON, through its Department of Transportation, hereinafter referred to as the "STATE".

RECITALS:

WHEREAS, the STATE, in the interest of aiding motor vehicle and pedestrian traffic, proposes to improve SR-16 by constructing a second Tacoma Narrows Bridge and modifying the existing Tacoma Narrows Bridge over RAILWAY's Seattle Subdivision, of the Pacific Division at railroad survey station 449+40.07, Railroad MP 8+2,702' (MP 8.51), on Government Lot 3, Section 34, T 21 N., R 2 E., WM at a location known as The Tacoma Narrows; and

WHEREAS, the STATE has contracted with Tacoma Narrows Constructors (Design Builder) through a separate Public/Private Partnership Agreement for the design and construction of the project and for a period of time after substantial completion, maintenance of said bridge by the Design Builder; and

WHEREAS, the STATE will require the RAILWAY to provide necessary easements covering both the construction phase and the operations and maintenance phase; and

WHEREAS, the RAILWAY will be required to perform certain work on its facilities which will be covered under a separate Construction and Maintenance Agreement between the Railroad and the Design Builder; and

WHEREAS, the RAILWAY is willing to consent to the execution of an easement upon the terms and conditions herein stated and not otherwise; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is mutually agreed as follows:

ARTICLE I

AGREEMENT:

NOW THEREFORE, in consideration of the covenants of the STATE hereinafter contained, and faithful performance thereof, RAILWAY agrees:

1. Upon execution of (1) this Agreement; (2) the Construction and Maintenance Agreement between the RAILWAY and the Design Builder; (3) the easement; (4) the Contractor's Right of Entry Agreement, and (5) the required insurance is approved, the STATE is hereby granted a right-of entry onto the RAILWAY's property as outlined in red on the attached Exhibit "B", and is authorized to commence construction for said project. This right-of-entry for construction purposes shall commence on the date of execution of the Agreements as provided for herein, and shall terminate upon completion of the project as determined by the State.
2. The RAILWAY shall grant to the STATE by separate instrument for and in consideration of \$ \_\_\_\_\_ a Crossing Easement of 35,864 square feet, more or less, over, through, and across the RAILWAY's right of way (as colored in blue on attached Exhibit "B") for an overhead bridge structure, including an easement upon the surface of the lands lying directly below the crossing easement for the purpose of maintenance of the bridge structure and appurtenances. The easement shall be in the form attached hereto as Exhibit "C".

IN CONSIDERATION of the premises, it is mutually agreed as follows:

1. The STATE agrees to advise RAILWAY's Manager Public Projects, in writing, of the date at which the STATE will assume maintenance responsibilities for the bridge within thirty (30) days after such date.
2. Before entering upon RAILWAY's right of way for maintenance purposes, STATE shall notify RAILWAY's Manager Public Projects to obtain prior authorization, and provide a railroad flagger. For any construction work, or maintenance work requiring construction activities, the STATE or its contractor shall provide Railroad Protective Insurance of \$2,000,000 per occurrence with an aggregate limit of \$6,000,000 when such work is conducted outside the limits of the bridge deck and over the railroad's property.
3. If work is contracted, STATE will require its contractor(s) to comply with the obligations in favor of RAILWAY, set forth in the "Right of Entry Agreement" a copy of which is attached as Exhibit A as may be revised from time to time, and accepts responsibility for compliance with these obligations by its contractor(s).
4. The STATE and/or its Contractors, as part of any contract for work to be performed on or about the RAILWAY's right-of-way, shall indemnify and save harmless the RAILWAY against and from for any and all damage to or destruction of property whatsoever, or injury to or death of persons whomsoever arising from or as a result of work on the Project (hereinafter collectively "Claims"), which shall include but not be limited to interference with the normal movement of trains; whether such Claims are caused by or result from work performed by the STATE, its Contractors, or by the RAILWAY doing work at the STATE's direction and expense. Should the STATE or its contractor's operations result in such Claims, the STATE shall reimburse the RAILWAY therefore.
5. Nothing in this Agreement is intended to be construed as a requirement for an indemnification against the sole negligence of the RAILWAY, its officers, employees or agents. Moreover, for any work performed in the STATE of Washington, the STATE will require its contractor to indemnify the RAILWAY and any other railroad company occupying or using the RAILWAY's right-of-way or line of railroad against all loss, liability and damages, including environmental damage, hazardous materials damage, penalties or fines that maybe assessed, caused by or resulting from the contractor's negligence, provided, however, if such loss, liability, damage, penalties or fines are caused by or result from the concurrent negligence of (a) the RAILWAY or the RAILWAY's officers, employees or agents, and (b) the contractor or the contractor's employees, agents or subcontractors, such indemnity shall be valid and enforceable only to the extent of the negligence of the contractor or the contractor's employees, agents or subcontractors.
6. The RAILWAY reserves the right to make modifications or additions to facilities within the limits of its right of way subject to applicable laws, rules or regulations, provided that the usefulness of the overcrossing for the purpose of separating highway and railroad traffic shall not thereby be impaired and reasonable notice of significant changes affecting the roadway is given to the STATE.
7. The STATE will not do, or permit anything within the easement area which will interfere with or endanger the facilities or operations of the RAILWAY. The STATE further agrees that the minimum vertical clearance from the bottom of the bridge to the top of the rail will not be reduced to less than 23 feet 6 inches. The minimum horizontal and vertical clearances for construction shall be as shown on the approved plans. The RAILWAY shall not intentionally do, nor permit, anything that will interfere with or endanger roadway facilities or vehicular traffic using the overcrossing.
8. The following activities or improvements are potentially harmful to the State's bridge when completed. The conditions and prohibitions listed below shall be included in the Crossing Easement noted in Section 1 of this agreement.
9. CONDITIONS ON ACTIVITIES THAT ARE CONSIDERED TO BE POTENTIALLY HAZARDOUS OR DETRIMENTAL TO THE STATE BRIDGE STRUCTURE:
  - A. Prior to construction of any improvements no closer than 8' to the perimeter of any pier or footing under the bridge by the RAILWAY, the RAILWAY shall provide improvement plans to the State, for the purpose of reviewing said plans to determine if there will be any negative impact caused to the bridge by said improvement.
  - B. Any improvements, which are not fire-resistant, and proposed to be constructed beneath the bridge shall be considered to be a hazard and will be unacceptable to the State.

C. No attachments, drilling or welding to any portion of the bridge shall be permitted without the written approval of the State.

D. No structure, excavation or embankment closer than 8 feet (8') to the perimeter of any pier or footing shall be permitted without the written approval of the State.

E. Manufacture of flammable, explosive or hazardous materials under the bridge, or any occupation which is a hazard to the highway or non-highway users, shall be prohibited.

F. Permanent storage of flammable liquids or explosives under the bridge shall not be permitted.

10. If the highway overcrossing shall at any time cease to be used by the public as a highway overpass, or shall by operation of law or otherwise become vacated or abandoned, the rights and benefits to the STATE under this Agreement shall immediately cease and the STATE shall remove said structure at its own cost and expense. If at a reasonable time the STATE has not removed the said structure, the RAILWAY shall remove the said structure at the STATE's expense. The RAILWAY shall be entitled to repossess the land to which it has executed easements to the STATE and to use the land thereafter as if this Agreement had never been executed.
11. This Agreement shall be interpreted in accordance with the laws of the State of Washington.
12. All the covenants and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, except that no party may assign any of its rights or obligations hereunder without the prior written consent of the other party.
13. In the event that construction of the Project has not begun for a period of three years from the date of this agreement, this agreement shall become null and void.
14. Any notice provided for or concerning this agreement shall be in writing and be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

The Burlington Northern and  
Santa Fe RAILWAY Company:

RAILWAY's Manager of Public Projects

With a copy to:

STATE OF WASHINGTON, Dept. of Transportation

15. No modification or amendment to this Agreement shall be valid until the same is reduced to writing and executed with the same formalities as were attendant to this Agreement.

16. In the event any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this agreement, the parties hereto agree that any such action or proceedings shall be brought in a state court of competent jurisdiction situated in Thurston County, Washington or in United States District Court for the Western District of Washington. This Agreement shall be interpreted in accordance with the laws of the State of Washington.

17. This Agreement contains all of the terms and conditions agreed by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto.

IN WITNESS WHEREOF, STATE has caused this Agreement to be executed and witnessed by its duly qualified and authorized officials, and BNSF has executed this Agreement, both as of the day and year first above written.

  
Burlington Northern Santa Fe Law Department

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

By   
Manager Public Project

STATE OF WASHINGTON,  
Dept. of Transportation

By   
Title 

APPROVED AS TO FORM

By:   
Asst. Atty. General

## EXHIBIT 'A'

### CONTRACTOR'S RIGHT OF ENTRY AGREEMENT FOR CONSTRUCTION PROJECTS ON OR ADJACENT TO PROPERTY OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Gentlemen:

The undersigned, hereinafter referred to as Contractor, has entered into a Contract dated \_\_\_\_\_, 2002, with the State of Washington, through its Dept. of Transportation ("STATE") for the performance of certain work in connection with the project -- "\_\_\_\_\_" -- in the performance of which work the Contractor will necessarily be required to conduct operations within THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("RAILWAY"), right of way and property ("RAILWAY Property"). The Contract provides that no work shall be commenced within RAILWAY Property until the Contractor employed in connection with said work for the State executes and delivers to RAILWAY an Agreement, in the form hereof, and shall have provided insurance of the coverage and limits specified in said Contract and Section 2 of this Agreement. If this Agreement is executed by other than the Owner, General Partner, President or Vice President of Contractor, evidence is furnished to you herewith certifying that the signatory is empowered to execute this Agreement for the Contractor.

Accordingly, as one of the inducements to and as part of the consideration for RAILWAY granting permission to Contractor to enter upon RAILWAY Property, Contractor, effective on the date of said Contract, has agreed and does hereby agree with RAILWAY as follows:

#### SECTION 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor shall indemnify and hold the RAILWAY and its agents, employees and/or officers harmless from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages or costs, of whatever kind or nature, brought against the RAILWAY arising in any manner from the Contractor's or any of Contractor's subcontractors' acts or omissions or failure to perform any obligations hereunder. Provided, however, that if such claims, demands, suits, at law or equity, actions, penalties, losses, damages or costs are caused by or result from the concurrent negligence of (a) the Contractor or any of its subcontractors and (b) the RAILWAY, its agents, employees and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or any of its subcontractors and provided further, that nothing herein shall require the Contractor to hold harmless or defend the RAILWAY, its agents, employees and/or officers from any claims, demands, suits at law or equity, actions, penalties, losses, damages or costs arising from the sole negligence of the RAILWAY, its agents, employees and/or officers.

The indemnification obligation shall include all claims brought by Contractor's employees against the RAILWAY, its agents, servants, employees or otherwise, and Contractor expressly waives its immunity under the industrial insurance act (RCW Title 51) and assumes potential liability for all actions brought by its employees.

It is mutually understood and agreed that the Indemnification and hold harmless provision provided in Section 1 shall survive any termination of this Agreement.

#### SECTION 2. INSURANCE.

(a). Before commencing any work under this Agreement, Contractor must provide and maintain in effect throughout the term of this Agreement insurance, at Contractor's expense, covering all of the work

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(g). The certificate of insurance shall guarantee that the policies will not be amended, altered, modified or canceled insofar as the coverage contemplated hereunder is concerned, without at least thirty (30) days notice mailed by registered mail to RAILWAY.

(h). Full compensation for all premiums which the Contractor is required to pay on all the insurance described hereinafter shall be considered as included in the prices paid for the various items of work to be performed under the Contract, and no additional allowance will be made therefor or for additional premiums which may be required by extensions of the policies of insurance.

It is further distinctly understood and agreed by the Contractor that its liability to the RAILWAY herein under SECTION 1 will not in any way be limited to or affected by the amount of insurance obtained and carried by the Contractor in connection with said Contract.

### SECTION 3. CONTRACTOR REQUIREMENTS

(a). While on or about RAILWAY Property, Contractor shall fully comply with RAILWAY's "Contractor Requirements", including (but not limited to) clearance requirements and personal protective equipment requirements. Contractor shall be responsible for fully informing itself as to RAILWAY "Contractor Requirements".

(b). Prior to entering RAILWAY Property, each person providing labor, material, supervision, or services connected with the work to be performed on or about RAILWAY Property shall attend a Safety Orientation session conducted or approved by RAILWAY. Contractor shall contact Manger Public Projects, [REDACTED], telephone [REDACTED] fax [REDACTED] at least thirty (30) calendar days in advance to arrange the necessary safety orientation session(s).

(c). Prior to entering RAILWAY property, the Contractor shall prepare and implement a safety action plan acceptable to RAILWAY. Contractor shall audit its compliance with that plan during the course of its work. A copy of said plan and audit results shall be kept at the work site and shall be available for inspection by RAILWAY at all reasonable times

### SECTION 4. PROTECTION OF RAILWAY FACILITIES AND RAILWAY FLAGGER SERVICES

(a). The Contractor shall give a minimum of at least 72 hours notice to Wayne Lonngren the RAILWAY's Roadmaster at telephone (253) 591-2563, in advance of when flagging services will be required to bulletin the flaggers position and shall provide five (5) working days notice to the Roadmaster to abolish the position per union requirements.

(b). RAILWAY flagger and protective services and devices will be required at all times when in the construction zone and furnished when Contractor's work activities are located over or under of and within twenty-five (25) feet measured horizontally from center line of the nearest track and when cranes or similar equipment positioned outside of 25-foot horizontally from track center line that could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

(1). When in the opinion of the RAILWAY's representative, it is necessary to safeguard RAILWAY's Property, employees, trains, engines and facilities.

(2). When any excavation is performed below the bottom of tie elevation, if, in the opinion of RAILWAY's representative, track or other RAILWAY facilities may be subject to movement or settlement.

(3). When work in any way interferes with the safe operation of trains at timetable speeds.

(4). When any hazard is presented to RAILWAY track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.



(5). Special permission must be obtained from the RAILWAY before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

(c). Flagging services will be performed by qualified RAILWAY flaggers. The base cost per hour for (1) flagger is \$50.00 which includes vacation allowance, paid holidays, RAILWAY and Unemployment Insurance, Public Liability and Property Damage Insurance, health and welfare benefits, transportation, meals, lodging and supervision, for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. These rates are subject to any increases which may result from RAILWAY Employees-RAILWAY Management negotiations or which may be authorized by Federal authorities. State/Contractor will be billed on actual costs in effect at time work is performed.

(1). A flagging crew generally consists of one employee. However, additional personnel may be required to protect RAILWAY Property and operations, if deemed necessary by the RAILWAY's representative.

(2). Each time a flagger is called, the minimum period for billing shall be the eight (8) hour basic day.

(3). The cost of flagger services provided by the RAILWAY, when deemed necessary by the RAILWAY's representative, will be borne by the State/Contractor.

## SECTION 5. TRAIN DELAYS

No work performed by Contractor shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the RAILWAY, its lessees, licensees or others, unless specifically permitted under this agreement, or specifically authorized in advance by the RAILWAY Representative. Nothing shall be done or suffered to be done by the Contractor at any time that would in any manner impair the safety thereof. When not in use, Contractor's machinery and materials shall be kept at least 50 feet from the centerline of RAILWAY's nearest track or except when located within a fenced area or approved by RAILWAY, and there shall be no vehicular crossings of RAILWAY's track except at existing open public crossings, or via the temporary construction crossing.

Contractor shall be responsible to RAILWAY, including its affiliated RAILWAY companies, and its tenants for damages for any unscheduled delay to freight or passenger trains that are caused by the Contractor as follows:

### (a). Train Delay Damages, Passenger Trains

(1). Contractor will be billed and Contractor shall pay RAILWAY within 30 days, as provided below, for the actual economic losses arising from loss of contractual incentive pay and bonuses, and contractual penalties resulting from passenger train delays, whether caused by Contractor, or subcontractors, or by the RAILWAY performing RAILWAY Work associated with this project. RAILWAY agrees that it will not perform any act to unnecessarily cause passenger train delay.

(2). Passenger trains operate under incentive/penalty contract with the RAILWAY. Under these arrangements, if RAILWAY does not meet its contract service commitment, RAILWAY may suffer loss of performance or incentive pay or be subject to a penalty payment. Contractor shall be responsible for any passenger train performance and incentive penalties or other contractual economic losses actually incurred by RAILWAY which are attributable to a passenger train delay caused by Contractor, or subcontractors.

(3). As example, a passenger train arrives 30 minutes after its contract service commitments with the RAILWAY and RAILWAY is assessed damages per terms of the contract. Contractor, and/or its subcontractors, caused a 29-minute delay to the passenger train and therefore the Contractor is not

responsible for passenger train performance incentives, penalties or other contractual economic losses actually incurred by RAILWAY.

(4). As example, a passenger train arrives 30 minutes after its contract service commitment and RAILWAY is assessed damages per terms of the contract. Contractor, and/or its subcontractors, caused a 31-minute delay to the passenger train and therefore the Contractor is 100% responsible for any passenger train performance incentive, penalties or other contractual economic losses actually incurred by RAILWAY.

(5). The contractual relationship between RAILWAY and its passenger customers is proprietary and confidential. In the event of a passenger train delay covered by this Agreement, RAILWAY will share information relevant to any passenger train delay to the maximum extent consistent with RAILWAY confidentiality obligations. Damage for passenger train delays for certain passenger trains could be as high as \$50,000.00 per passenger train.

**(b). Train Delays Damages, Freight Trains**

(1). Contractor will be billed and Contractor shall pay RAILWAY within 30 days, as provided herein, for the damages for freight train delays, whether caused by the State, its contractors or subcontractors, or by the RAILWAY working for the State. The Contractor will be billed at a rate of \$304.28 (for 1998) per freight train hour for each freight train delayed as determined from RAILWAY's records. Each delay may cause delays to more than one freight train at the same time. These rates will be updated annually and Contractor will be billed at rate per hour in effect at the time the delay occurred.

Kindly acknowledge receipt of this letter by signing and returning to the undersigned two original copies of this letter, which, upon execution by RAILWAY, shall constitute an Agreement between us.

Yours truly,

Fe (Contractor)

By \_\_\_\_\_

(Title) \_\_\_\_\_

Address \_\_\_\_\_

City, \_\_\_\_\_ State, \_\_\_\_\_ Zip \_\_\_\_\_

The Burlington Northern and Santa  
RAILWAY Company

By  
Manager Public Projects

Accepted this \_\_\_\_\_ day of \_\_\_\_\_  
2002

**LIMITED SEEPAGE, POLLUTION AND CONTAMINATION COVERAGE  
ENDORSEMENT WORDING**

In consideration of the premium charged it is understood and agreed that Exclusion f. of Coverage A. of this Policy shall not apply to the liability of the Insured resulting from seepage and/or pollution and/or contamination caused solely by:

- a) unintended fire, lightning or explosion; or
- b) a collision or overturning of a road vehicle; or
- c) a collision or overturning or derailment of a train.

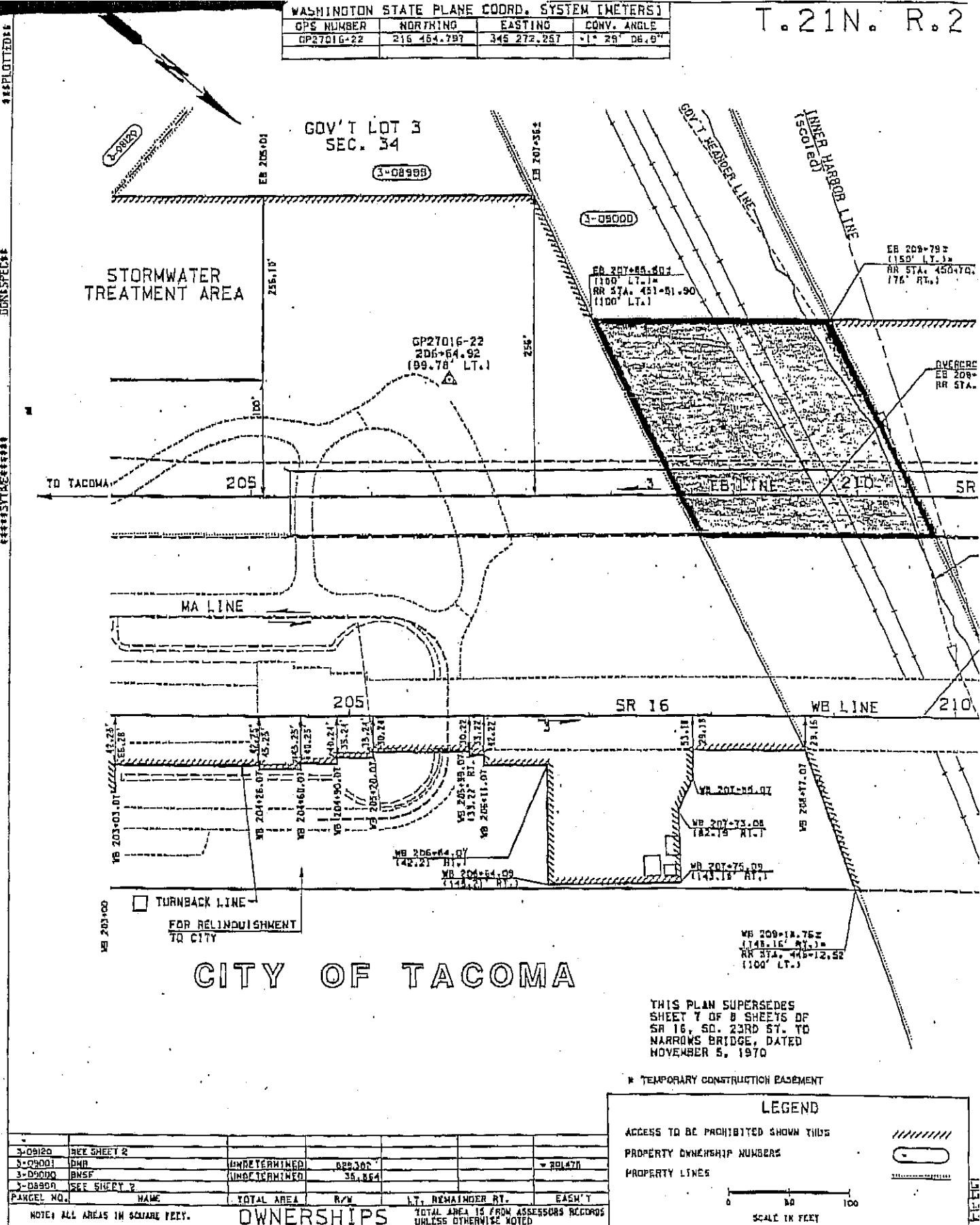
Notwithstanding the foregoing it is agreed that the coverage provided by this Endorsement shall not apply to:

- 1. loss of, damage to or loss of use of property directly or indirectly resulting from sub-surface operations of the Insured, and/or removal of, loss of or damage to sub-surface oil, gas or any other substance;
- 2. any site or location used in whole or in part for the handling, processing, treatment, storage, disposal or dumping of any waste materials or substances;
- 3. the cost of evaluating and/or monitoring and/or controlling seeping and/or polluting and/or contaminating substances;
- 4. the cost of removing and/or nullifying and/or cleaning up seeping and/or polluting and /or contaminating substances on property at any time owned and/or leased and/or rented by the Insured and/or under the control of the Insured.

Notwithstanding the foregoing, Item 1 does not apply to tunnels.

**EXHIBIT B,**  
**Vicinity Map and Easements**

T. 21 N. R. 2



## ACCESS NOTES:

PEDESTRIAN AND BICYCLE TRAFFIC WILL BE PERMITTED ACCESS AND USE OF THE TRAIL DESIGNATED ON THE LT. BETWEEN STA. WB 203+00 AND STA. WB 250+50.

NO ACCESS IS PERMITTED BETWEEN THE RAILWAY RIGHT OF WAY AND THE TRAVELED HIGHWAY LANES.

TRAFFIC MOVEMENT WILL BE PERMITTED UNDER THE NARROWS BRIDGES AS RESTRICTED CLEARANCE PERMITS;

ACCESS TO MEMORIAL PARK WILL BE PERMITTED UNDER THE NARROWS BRIDGE STRUCTURES FROM THE WA LINE AT APPROXIMATE STATION WB 206+00

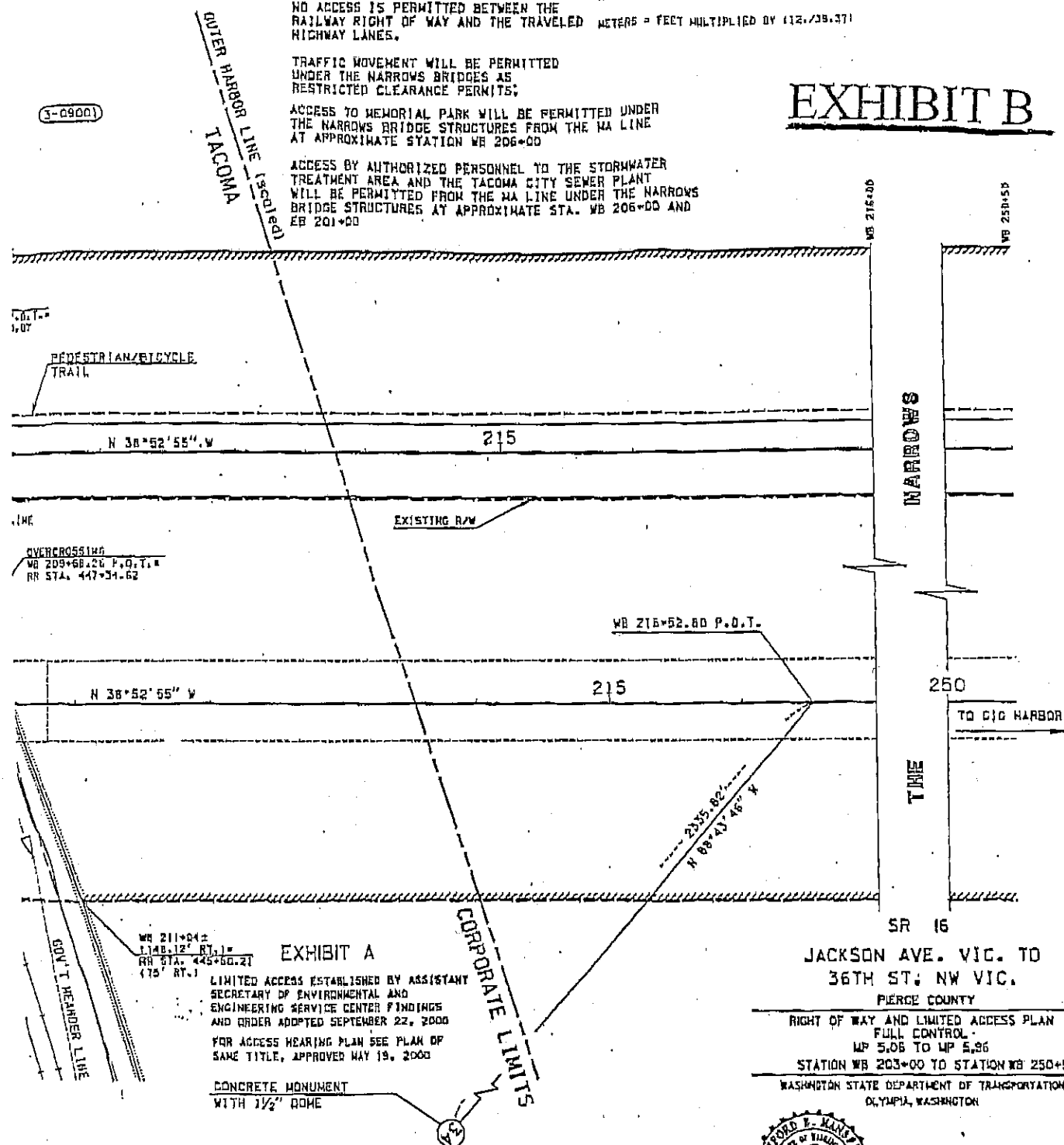
ACCESS BY AUTHORIZED PERSONNEL TO THE STORMWATER TREATMENT AREA AND THE TACOMA CITY SEWER PLANT WILL BE PERMITTED FROM THE WA LINE UNDER THE NARROWS BRIDGE STRUCTURES AT APPROXIMATE STA. WB 206+00 AND EB 201+00

THE BASIS OF BEARINGS AND DISTANCES ARE DETERMINED FROM WASHINGTON STATE PLANE COORDINATE SYSTEM NORTH ZONE (NAD 83/91).

THE DISTANCES SHOWN ARE GROUND DISTANCES. TO OBTAIN THE GRID DISTANCE, CONVERT THE GROUND DISTANCE TO METERS AND MULTIPLY BY THE COMBINED FACTOR OF 0.99999427. THE COMBINED SCALE FACTOR IS DERIVED BY MULTIPLYING THE ELEVATION FACTOR OF 0.99999528 BY THE SCALE FACTOR OF 0.99999895.

METERS = FEET MULTIPLIED BY (12./39.37)

## EXHIBIT B



## EXHIBIT A

LIMITED ACCESS ESTABLISHED BY ASSISTANT SECRETARY OF ENVIRONMENTAL AND ENGINEERING SERVICE CENTER FINDINGS AND ORDER ADOPTED SEPTEMBER 22, 2000  
FOR ACCESS HEARING PLAN SEE PLAN OF SAME TITLE, APPROVED MAY 19, 2000

CONCRETE MONUMENT  
WITH 1 1/2" DOME

SR 16

JACKSON AVE. VIC. TO  
36TH ST. NW VIC.

PIERCE COUNTY

RIGHT OF WAY AND LIMITED ACCESS PLAN  
FULL CONTROL

WB 5.08 TO WB 5.26

STATION WB 203+00 TO STATION WB 250+50

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION  
OLYMPIA, WASHINGTON



EXPIRES MAY 3, 2008

DEPUTY STATE DESIGN ENGINEER

APPROVED SEPTEMBER 22, 2000  
SHEET 3 OF 13 SHEETS

0-4-07	Revised Area Parcel 3-09001
0-10-01	Revised Area Parcel 3-09001
0-12-01	Revised Boundary Parcel 3-09001; Add Parcel 3-09020
0-18-00	Revised Area Parcel 3-09001
Approval	Revision Description

## EXHIBIT C, EASEMENT FORM

### WHEN RECORDED MAIL TO:

Washington State DOT  
P. O. Box 47338  
Olympia, WA 98504-7338

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### EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort. Worth, Texas 76131, Grantor, for Fourteen Thousand and Three Hundred and No/100 Dollars (\$14,300.00) and other good and valuable consideration by the STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION, Grantee, and the promises of the Grantee hereinafter specified, does hereby remise, release and quitclaim unto the Grantee, to the same extent and purpose as if the rights herein granted had been acquired under Eminent Domain statutes of the State of Washington subject to the terms and conditions hereinafter set forth, an **EASEMENT** for the construction, operation, and maintenance of a bridge structure, abutments, and associated structures hereinafter called "**Bridge**" over, upon and across the following described premises, situated in Pierce County, State of Washington, to-wit:

All that portion of The Burlington Northern and Santa Fe Railway Company's right of way located in Government Lot 3 of Section 34 Township 21 North, Range 2 East of the Willamette Meridian; and Blocks 126 and 126A, Map of Tacoma Tidelands, in Pierce County, Washington, complete legal description described on Pages 6 and 7 as Exhibit "A" consisting of 2 pages, and shown hatched on Page 8 as Exhibit "B" consisting of 1 page, all attached hereto and by this reference made a part hereof.

Assessor's Property Tax Parcel Account Number(s): No tax serial numbers - Railroad right of way.

**RESERVING**, however, unto the Grantor, its successors and assigns, the right to construct, place, operate, maintain, alter, repair, replace, renew, improve and remove communication lines above, below and on the surface of the premises, including, without limitation, transmission by conduit, fiber optics, cable, wire or other means of electricity, voice data, video, digitized information, or other materials or information, pipelines, utility lines, track and facilities including the right of ingress and egress in any such manner as does not unreasonably interfere with Grantee's use of the premises for said Bridge, and further reserving unto Grantor, its successors and assigns, all right and privilege of ingress and egress to said premises as Grantor, its successors and assigns may require to investigate and remediate environmental contamination and hazards, and further reserving the right and privilege to use said land for any and all purposes not inconsistent with the use thereof for said Bridge purposes.

The foregoing easement is made subject to and upon the following express conditions:

1. To existing interests in the above-described premises to whomsoever belonging and of whatsoever nature and any and all extensions and renewals thereof, including but not limited to underground pipe line or lines, or any type of wire line or lines, if any.
2. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of said Bridge shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing.
3. The Grantee shall bear the cost of removal, relocation or reconstruction of any and all right of way fences, telephone or telegraph poles, or other facilities, the removal, relocation or reconstruction of which may be made necessary by reason of the use of said premises for said Bridge purposes.



4. The Grantee shall, at its own cost and expense, make adjustment with industries or other lessees of Grantor for buildings or improvements that may have to be relocated, reconstructed or destroyed by reason of the construction and maintenance of said Bridge on said premises.

5. This instrument is granted according to the terms and conditions of that certain Operation and Maintenance Agreement, between the Grantor and the Grantee, dated \_\_\_\_\_, 2002, and made subject to the terms and conditions contained therein.

6. On condition that Grantee(s) on behalf of itself, its Successor(s) and assigns, by acceptance hereof, covenants and agrees not to construct, without the prior written consent of Grantor, any additional structures on or within the easement herein granted and further agrees that if the present bridge located on the premises is/are at any time in the future removed, raised, relocated or destroyed by an act of man or nature, no new structure will be built or rebuilt on these premises, without prior written agreement of the Grantor, concerning structure design, compensation, provisions for its train operations during and after construction, and appropriate provisions for indemnification and insurance.

7. The Grantee or its contractor(s) shall telephone Grantor's Communication Network Control Center at (800) 533-2891 (a 24 hour number) to determine if fiber optic cable is buried anywhere on the premises; and if so, the Grantee or its contractor(s) will contact the Telecommunications Company(ies) involved, and make arrangements with the Telecommunications Company(ies) for protection of the fiber optic cable prior to beginning any work on the premises.

8. If said described premises, or any part thereof, shall at any time cease to be used by said Grantee, or by the public, for the purpose, as aforesaid, or should they be converted to any other use whatsoever, or should the Grantee fail to perform any of the conditions herein expressed, then and in any such event, all the right, title, interest, benefits and enjoyment of said Grantee, or of the public, in and to said premises, for any purposes whatsoever, shall immediately cease and the said Grantor, its successors and assigns, may, at its or their option, re-enter, retake and hold said described lands and premises as of the present estate of said Grantor without compensation to said Grantee, the public, or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of, or damage to any premises or the improvements thereon abutting on said easement area or any part thereof.

9. The Grantor does not warrant its title to said premises nor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interest of others, including the tenants and licensees of the Grantor.

10. This easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee.

**TO HAVE AND TO HOLD THE SAME**, together with all the hereditaments and appurtenances thereunto belonging to Grantee for public use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

IN WITNESS WHEREOF, the said **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY** has caused this instrument to be signed by its authorized officer, and the corporate seal affixed on the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

**ACCEPTED:**

**STATE OF WASHINGTON**  
Department of Transportation

**THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY**

By: \_\_\_\_\_

By: \_\_\_\_\_

General Director Real Estate

**ATTEST:**

By: \_\_\_\_\_

Assistant Secretary

STATE OF TEXAS           )  
                                  ) ss.  
COUNTY OF TARRANT    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared D. P. Schneider and Patricia Zbichorski, to me known to be the General Director Real Estate, and Assistant Secretary, respectively, of The Burlington Northern and Santa Fe Railway Company, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of Texas

Residing at Fort Worth, Texas

My appointment expires: \_\_\_\_\_

APPROVED BY LAW:

## EXHIBIT "A"

### EASEMENT Parcel No. 3-09000

All that portion of Government Lot 3 of Section 34, Township 21 North, Range 2 East, W.M. and Blocks 126 and 126A, Map of Tacoma Tidelands, according to the Plat Filed September 14, 1895, Pierce County, Washington lying in a tract beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) EB 207+85.50 +/- RR STA. 451+51.90 (100' LT.) on the EB Line Survey of SR 16, Jackson Ave. Vic. to 36<sup>th</sup> St. NW Vic. and 150 feet southwesterly therefrom, said point being on the easterly right of way line of Burlington Northern Santa Fe (hereinafter referred to as BNSF); thence northwesterly parallel with said line survey to a point opposite HES EB 209+79 +/- RR STA. 450+70.20 (75' RT.), said point being on the westerly BNSF right of way line; thence northeasterly along the westerly BNSF right of way line to a point opposite HES WB 211+04 +/- RR STA. 445+50.21 (75' RT.) on the WB Line Survey of said highway and 148.12 feet northeasterly therefrom; thence southeasterly to a point opposite HES WB 209+18.76 +/- RR STA 446+12.52 (100' LT.) on said line survey and 148.16 feet northeasterly therefrom, said point being on the easterly BNSF right of way line; thence southwesterly along said BNSF right of way line to the point of beginning.

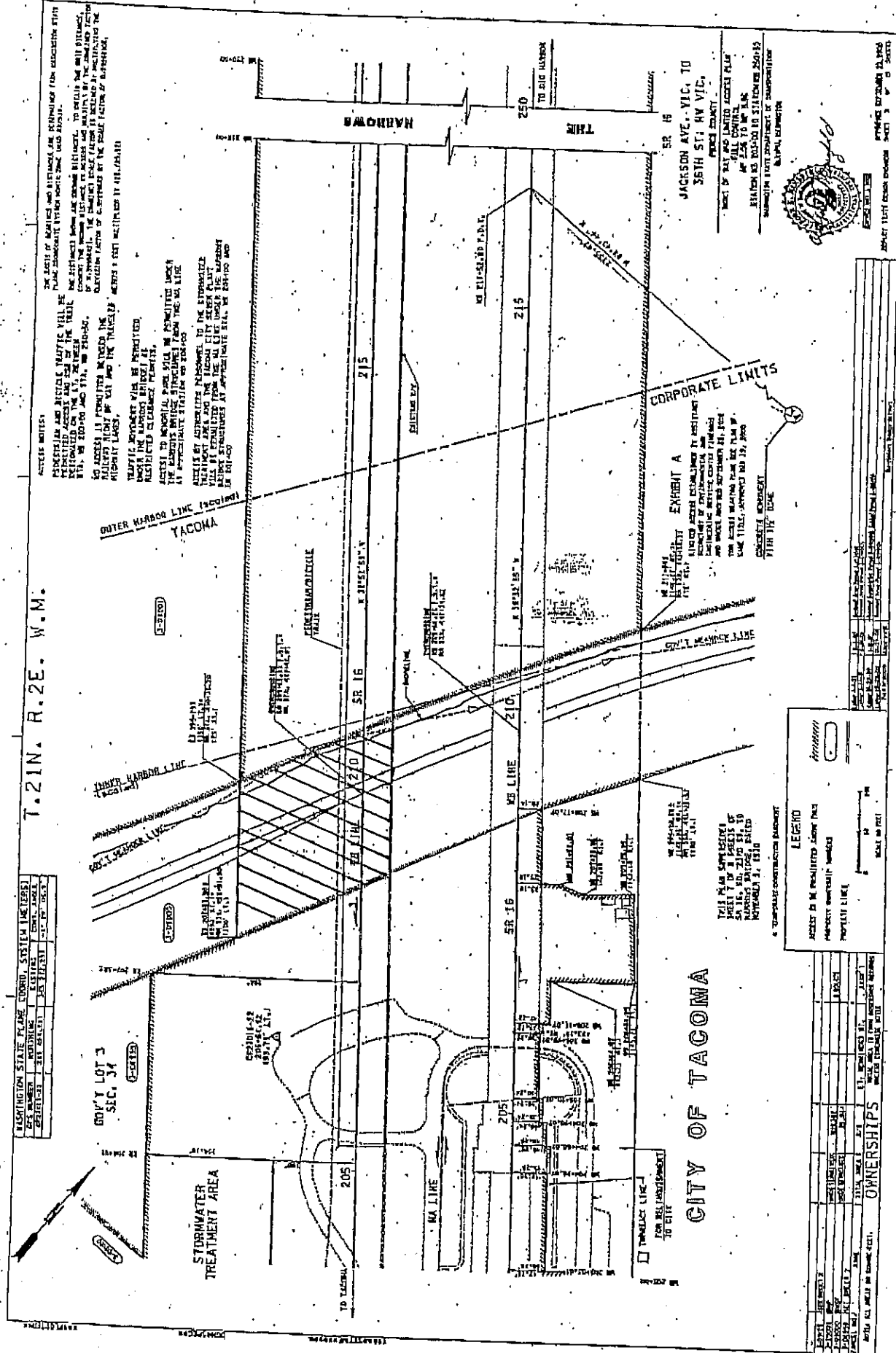
EXCEPT the lands previously conveyed by the Northern Pacific Railway Company, a Wisconsin Corporation, to the State of Washington, by and through the Washington Toll Bridge Authority Company in that certain easement dated July 12, 1939, and recorded in Pierce County under Auditor's File Number 1247807, under Volume 622, page 341.

Together with an easement for the purpose of entering upon the surface of the lands lying directly below the above described tract for the purpose of construction, operation, maintenance, or reconstruction of the bridge structure including the inspection of usage under the structure which may be detrimental to the bridge structure or its appurtenances.

CONDITIONS ON ACTIVITIES THAT ARE CONSIDERED TO BE POTENTIALLY  
HAZARDOUS OR DETRIMENTAL TO THE STATE BRIDGE STRUCTURE

- A. Prior to construction of any improvements no closer than 8 feet to the perimeter of any pier or footing under the bridge by the Grantor, the Grantor shall provide improvement plans to the Grantee, for the purpose of reviewing said plans to determine if there will be any negative impact caused to the bridge by said improvement.
- B. Any improvements, which are not fire-resistant, and proposed to be constructed beneath the bridge shall be considered to be a hazard and will be unacceptable to the Grantee.
- C. No attachments, drilling or welding to any portion of the bridge shall be permitted without the written approval of the Grantee.
- D. No structure, excavation or embankment closer than eight feet (8') to the perimeter of any pier or footing shall be permitted without the written approval of the Grantee.
- E. Manufacture of flammable, explosive or hazardous materials under the bridge, or any occupation, which is a hazard to the highway or non-highway users, shall be prohibited.
- F. Permanent storage of flammable liquids or explosives under the bridge shall not be permitted.

The lands herein described as an easement contain an area of 35,864 square feet, more or less, the specific details concerning all of which are to be found in that map of definite location now of record and on file in the office of the Secretary of Transportation at Olympia and bearing date of approval September 22, 2000, revised May 18, 2001.



**EXHIBIT B**